

From: David Walser
To: Microsoft ATR
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Subject: Microsoft Settlement

I believe the proposed settlement in this very important trial is not in the public interest.

First, the settlement doesn't go far enough in preventing Microsoft's further abuse of its monopoly for continued monopoly maintenance. Through its control of the technology and licensing, Microsoft is able to make its software widely used. For software such as Office and Media Player, Microsoft controlled file formats become entrenched, and interoperability becomes crucial to users who wish to use non-Microsoft software. Microsoft's ability to control these file formats through control of the technology and licensing allows them to hamper attempts by makers of alternative software to interoperate with these file formats. An effective remedy, that would reduce the barrier to entry for competing operating systems, would require Microsoft to make full specifications to these file formats openly available to the public, in advance of the release of the Microsoft products the formats are to be used with. They should also be prohibited from using Intellectual Property laws such as Copyright and Patenting to get around this requirement.

When Microsoft argued their Copyright allowed them to completely control the desktop shipped by OEMs, the Court already shot down this argument.

The file formats should be completely open with no limitations, which brings me to my next complaint about the settlement. It relies heavily on the use of "Reasonable and Non-Discriminatory" (RAND) licensing of technologies for which Microsoft is required to cooperate with the industry. Unfortunately, as has been discussed recently at the World Wide Web Consortium (W3C), RAND licensing can't avoid being discriminatory, as it's incompatible with Open Source licensing (as defined by the Open Source Initiative, <http://www.opensource.org/>). As Open Source software is the only credible competition to Microsoft currently, this is a very big problem. The remedy should rely on no provision which lets Microsoft only cooperate with commercial entities, and should be careful that Open Source software can benefit equally.

Another problem with the proposed settlement is it is very vague, and gives Microsoft too much power over carrying out the provisions of the settlement. A remedy should be very clear about what Microsoft must do, and cannot do. It should be very clear where authority lies in carrying out and enforcing it, and that authority should not lay in the hands of Microsoft's directors. There are too many places in the proposed settlement where exceptions are defined, and Microsoft gets to decide when those come into play. As should be obvious from the last settlement reached between Microsoft and the DOJ, exceptions and loopholes should be kept to a minimum. The exceptions in the current proposed settlement reduce it to almost nothing.

Finally, the biggest problem with the proposed settlement is it lacks an effective enforcement mechanism. Under its terms, Microsoft could more or less ignore it, with no real penalty. An appropriate remedy should be careful to address this.